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HOUSE BILL 21

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO TAXATION; PROVIDING FOR THE SALE, EXCHANGE OR
TRANSFER OF THE INCOME TAX CREDIT AND THE CORPORATE INCOME TAX
CREDIT THAT MAY BE CLAIMED FOR CERTAIN CONVEYANCES OF REAL
PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-18.10 NMSA 1978 (being Laws 2003,
Chapter 331, Section 7) is amended to read:

"7-2-18.10. TAX CREDIT [~~AVAILABLE~~]--CERTAIN CONVEYANCES
OF REAL PROPERTY.--

A. There shall be allowed as a credit against the
tax liability imposed by the Income Tax Act, an amount equal to
fifty percent of the fair market value of land or interest in
land that is conveyed for the purpose of open space, natural
resource or biodiversity conservation, agricultural

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underscored material = new
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1 preservation or watershed or historic preservation as an
2 unconditional donation in perpetuity by the landowner or
3 taxpayer to a public or private conservation agency eligible to
4 hold the land and interests therein for conservation or
5 preservation purposes. The fair market value of qualified
6 donations made pursuant to this section shall be substantiated
7 by a "qualified appraisal" prepared by a "qualified appraiser",
8 as those terms are defined under applicable federal laws and
9 regulations governing charitable contributions.

10 B. The amount of the credit that may be claimed by
11 a taxpayer shall not exceed one hundred thousand dollars
12 (\$100,000). In addition, in a taxable year the credit used may
13 not exceed the amount of individual income tax otherwise due.
14 [~~A portion of the credit that is unused in a taxable year may~~
15 ~~be carried over for a maximum of twenty consecutive taxable~~
16 ~~years following the taxable year in which the credit originated~~
17 ~~until fully expended.] A taxpayer may claim only one tax
18 credit per taxable year.~~

19 C. Qualified donations shall include the conveyance
20 in perpetuity of a fee interest in real property or a
21 less-than-fee interest in real property, such as a conservation
22 restriction, preservation restriction, agricultural
23 preservation restriction or watershed preservation restriction,
24 pursuant to the Land Use Easement Act and provided that the
25 less-than-fee interest qualifies as a charitable contribution

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1 deduction under Section 170(h) of the Internal Revenue Code.
2 Dedications of land for open space for the purpose of
3 fulfilling density requirements to obtain subdivision or
4 building permits shall not be considered as qualified donations
5 pursuant to the Land Conservation Incentives Act.

6 D. Qualified donations shall be eligible for the
7 tax credit if the donations are made to the state of New
8 Mexico, a political subdivision thereof or a charitable
9 organization described in Section 501(c)(3) of the Internal
10 Revenue Code and that meets the requirements of Section
11 170(h)(3) of that code.

12 E. To be eligible for treatment as qualified
13 donations under this section, land or interests in lands must
14 be certified by the secretary of energy, minerals and natural
15 resources as fulfilling the purposes as set forth in Section [2
16 ~~of the Land Conservation Incentives Act~~] 75-9-2 NMSA 1978. The
17 use and protection of the lands, or interests therein, for open
18 space, natural area protection, biodiversity habitat
19 conservation, land preservation, agricultural preservation,
20 historic preservation or similar use or purpose of the property
21 shall be assured in perpetuity.

22 F. To receive a credit pursuant to this section, a
23 person shall apply to the taxation and revenue department on
24 forms and in the manner prescribed by the department. The
25 application shall include a certification made pursuant to

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1 Subsection E of this section. If all of the requirements of
2 this section have been complied with, the department may issue
3 to the applicant a document granting the tax credit. The
4 document shall be numbered for identification and declare its
5 date of issuance and the amount of the tax credit allowed for
6 the qualified donation made pursuant to this section. A
7 document issued pursuant to this subsection may be sold,
8 exchanged or otherwise transferred, and the tax credit may be
9 carried forward for a period of twenty taxable years following
10 the taxable year in which the credit originated until fully
11 expended. The parties to such a transaction shall notify the
12 department of the sale, exchange or transfer within ten days of
13 the sale, exchange or transfer."

14 Section 2. Section 7-2A-8.9 NMSA 1978 (being Laws 2003,
15 Chapter 331, Section 8) is amended to read:

16 "7-2A-8.9. TAX CREDIT [~~AVAILABLE~~]--CERTAIN CONVEYANCES OF
17 REAL PROPERTY.--

18 A. There shall be allowed as a credit against the
19 tax liability imposed by the Corporate Income and Franchise Tax
20 Act an amount equal to fifty percent of the fair market value
21 of land or interest in land that is conveyed for the purpose of
22 open space, natural resource or biodiversity conservation,
23 agricultural preservation or watershed or historic preservation
24 as an unconditional donation in perpetuity by the landowner or
25 taxpayer to a public or private conservation agency eligible to

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1 hold the land and interests therein for conservation or
2 preservation purposes. The fair market value of qualified
3 donations made pursuant to this section shall be substantiated
4 by a "qualified appraisal" prepared by a "qualified appraiser",
5 as those terms are defined under applicable federal laws and
6 regulations governing charitable contributions.

7 B. The amount of the credit that may be claimed by
8 a taxpayer shall not exceed one hundred thousand dollars
9 (\$100,000). In addition, in a taxable year the credit used may
10 not exceed the amount of corporate income tax otherwise due.

11 ~~[A portion of the credit that is unused in a taxable year may~~
12 ~~be carried over for a maximum of twenty consecutive taxable~~
13 ~~years following the taxable year in which the credit originated~~
14 ~~until fully expended.]~~ A taxpayer may claim only one tax
15 credit per taxable year.

16 C. Qualified donations shall include the conveyance
17 in perpetuity of a fee interest in real property or a
18 less-than-fee interest in real property, such as a conservation
19 restriction, preservation restriction, agricultural
20 preservation restriction or watershed preservation restriction,
21 pursuant to the Land Use Easement Act; provided that the
22 less-than-fee interest qualifies as a charitable contribution
23 deduction under Section 170(h) of the Internal Revenue Code.
24 Dedications of land for open space for the purpose of
25 fulfilling density requirements to obtain subdivision or

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1 building permits shall not be considered as qualified donations
2 pursuant to the Land Conservation Incentives Act.

3 D. Qualified donations shall be eligible for the
4 tax credit if the donations are made to the state of New
5 Mexico, a political subdivision thereof or a charitable
6 organization described in Section 501(c)(3) of the Internal
7 Revenue Code and that meets the requirements of Section
8 170(h)(3) of that code.

9 E. To be eligible for treatment as qualified
10 donations under this section, land or interests in lands must
11 be certified by the secretary of energy, minerals and natural
12 resources as fulfilling the purposes as set forth in Section [2
13 ~~of the Land Conservation Incentives Act~~] 75-9-2 NMSA 1978. The
14 use and protection of the lands, or interests therein, for open
15 space, natural area protection, biodiversity habitat
16 conservation, land preservation, agricultural preservation,
17 historic preservation or similar use or purpose of the property
18 shall be assured in perpetuity.

19 F. To receive a credit pursuant to this section, a
20 person shall apply to the taxation and revenue department on
21 forms and in the manner prescribed by the department. The
22 application shall include a certification made pursuant to
23 Subsection E of this section. If all of the requirements of
24 this section have been complied with, the department may issue
25 to the applicant a document granting the tax credit. The

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1 document shall be numbered for identification and declare its
2 date of issuance and the amount of the tax credit allowed for
3 the qualified donation made pursuant to this section. A
4 document issued pursuant to this subsection may be sold,
5 exchanged or otherwise transferred, and the tax credit may be
6 carried forward for a period of twenty taxable years following
7 the taxable year in which the credit originated until fully
8 expended. The parties to such a transaction shall notify the
9 department of the sale, exchange or transfer within ten days of
10 the sale, exchange or transfer."

11 Section 3. APPLICABILITY.--The provisions of this act
12 apply to taxable years beginning on or after January 1, 2006.